

Claims 35, 37-39, 41-46 and 48-49 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Weihrauch in view of Brown and further in view of Kressner. The Examiner asserts that

It would have been obvious for one of ordinary skill in the art to substitute the toothcleaning elements of Weihrauch for the toothcleaning elements that include both tufts of bristles and a plurality of elastomeric fins pivotably mounted in and extending from the support member, as Brown, Jr. et al. teach, in order to provide bristles for cleaning teeth and elastomeric fins that have textured ribs for enhanced cleaning of interdental spaces and also it would have been obvious to one of ordinary skill in the art to modify the specific dimensions of the support member of the toothbrush head of Weihrauch and Brown, Jr., to have an overall surface area from about 170 to 200 mm², a length of 14 to 19 mm, and a width of 12 to 15 mm, as Kressner et al. teach, in order to have a reasonable sized toothbrush head capable of sufficiently cleaning the oral cavity.

Applicants submit that this line of reasoning is based on impermissible hindsight, and that therefore the Examiner has not established *prima facie* obviousness. To establish a *prima facie* case of obviousness, the Examiner must establish (1) that the prior art reference (or references when combined) teach or suggest all the claim limitations; and (2) that there is some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or references, or to combine reference teachings; and (3) that there is a reasonable expectation of success. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. (MPEP §2143). Applicants submit that in this case the Examiner has met neither part (2) or part (3) of this burden.

There is no motivating disclosure in the references of record that would have led one of ordinary skill in the art to selectively combine the references as proposed. Applicants note that oral care is a crowded art, with hundreds, if not thousands, of patents that the artisan could have looked to for guidance in modifying Weihrauch. The art of record does not suggest that the Weihrauch toothbrush needs any modification at all, much less the multiple iterations of modification suggested by the Examiner, and even much less with the features taught in the particularly references selected by the Examiner. Applicants respectfully submit that the

Examiner has simply used the Applicants' claims as a roadmap to make an artificial connection between a number of references in order to reject the Applicants' claims. It is axiomatic that obviousness cannot be established by simply stitching together disparate pieces of prior art using the Applicant's claims as a template (see, e.g., Interconnect Planning Corp. v. Feil, 774 F.2d 1132; Loctite Corp. v. Ultraseal Ltd., 781 F.2d 861; and In re Fine, 837 F.2d 1071) because Applicants' claims are not disjointed lists of elements, but present an invention that must be considered *as a whole* (see, e.g., MPEP 2141.02, and Stratoflex, Inc. v. Aeroquip, 713 F.2d 1530).

Moreover, in the oral care field an essential part of development work is to determine just *which* features can and should go together in a product. A combination that hypothetically seems desirable may not actually work well in practice. In the present case, the inventors themselves were not initially sure whether a head having the claimed dimensions would be well received, or whether elastomeric fins would be comfortable when used on such a head. A tricky aspect of product design is determining which features can be added to a product without deleteriously affecting the attributes provided by other features of the product. Thus, even if the artisan had fortuitously selected the references, and the features from those references, that have been combined by the Examiner, the artisan would not have had a reasonable expectation of success. The only teaching that would have led the artisan to make such a combination is *Applicants' own disclosure*.

Finally, Weihsrauch and Kressner are generally directed to electric toothbrushes, while Brown is generally directed to a mechanical toothbrush. Applicants respectfully submit that the artisan would not have looked to references from the field of mechanical toothbrushes when seeking to modify an electric toothbrush. Applicants respectfully note that the artisan would have been aware that just because a feature works in a mechanical toothbrush does not mean that it will necessarily work in the same manner in an electric toothbrush. For example, because manual toothbrushes are generally used with a scrubbing motion, the artisan would not have expected that a feature such as a pivotably mounted elastomeric fin would be suitable for use on an oscillating power toothbrush head.

Claims 35, 39, 41-43, 46 and 48-49 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Biro in view of Calabrese, in further view of White, and in even further view of Kressner. In this rejection, the Examiner looked to four references to find the elements recited in Applicants' independent claims. Applicants respectfully submit that, for the reasons discussed above, the artisan would not have selectively combined the teachings of the references as proposed by the Examiner. As discussed above, such a selective combination of features would not have been made absent Applicants' own disclosure as a guide. Moreover, also as discussed above, the artisan would not have had a reasonable expectation of success – the artisan would not have had a reasonable expectation that such a combination would have provided a toothbrush having a desirable balance of properties. Moreover, as noted above, the artisan would not have considered it obvious to include features disclosed by White, which pertains to manual toothbrushes, in the electric toothbrushes of Biro.

In view of the above remarks, Applicants respectfully request that these rejections be withdrawn.

Dependent claims 37 and 44 have been rejected as unpatentable over Biro in view of Calabrese, White, Kressner and Coney, and dependent claims 38 and 45 have been rejected as unpatentable over Biro in view of Calabrese, White, Kressner and Carlucci. Applicants respectfully submit that these claims are patentable at least for the reason that they depend from a patentable base claim. Moreover, Applicants note that the Examiner's need to combine five references to allegedly reach the subject matter of these claims is even further evidence of the use of impermissible hindsight reconstruction.

Please charge any fees, including the Petition for Extension of Time fee, and apply any other charges or credits, to deposit account 06-1050, referencing Attorney Docket No. 00216-616001.

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Respectfully submitted,

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